

Decision: 2002 ME 23

Docket: Lin-01-507

Submitted

on Briefs: January 28, 2002

Decided: February 11, 2002

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, DANA, ALEXANDER, and CALKINS, JJ.

OYSTER SHELL, INC.

v.

TOWN OF DAMARISCOTTA

RUDMAN, J.

[¶1] Oyster Shell, Inc. appeals from the judgment entered in the Superior Court (Lincoln County, *Mills, C.J.*), in its 80B action, affirming the decision of the Damariscotta Board of Appeals. Because the Board of Appeals lacks authority to hear Oyster Shell's appeal, we vacate the judgment.

[¶2] Oyster Shell applied to the Damariscotta Code Enforcement Officer (CEO) for a conditional use permit to build an additional ten condominium motel units. The CEO rejected the permit application on the ground that the additional units would violate the Land Use Ordinance. Oyster Shell, at the suggestion of the CEO, appealed to the Damariscotta Board of Appeals which determined that the appeal should have been taken to the Planning Board and remanded the appeal back to the CEO for remand to the Planning Board. Oyster Shell then appealed to the Superior Court, which affirmed the Board of Appeals. This appeal followed.

[¶3] We review questions of law de novo, and “[t]he jurisdiction of the Board of Appeals is a question of law that must be ascertained from an interpretation of municipal statutes and local ordinances.” *Salisbury v. Town of Bar Harbor*, 2002 ME 13, ¶ 8, --- A.2d. ---. The Damariscotta Land Use Ordinance provides that “the Planning Board shall hear and approve, approve with modifications or conditions, or deny an application for a Conditional Use Permit.” DAMARISCOTTA LAND USE ORDINANCE 9(2)(b) (1998). The ordinance clearly states that the issuance or denial of permits by the CEO shall be reviewed by the Planning Board.

[¶4] The Board of Appeals lacked authority to hear Oyster Shell’s appeal. Therefore, we vacate the judgment of the Superior Court, and remand for further proceedings.

The entry is:

Judgment vacated. Remanded to the Superior Court to vacate the decision of the Zoning Board of Appeals and remand to the Damariscotta Planning Board for further proceedings consistent with this opinion.

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